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09/922,376	08/03/2001	Jeffrey Lynn Chamberlain	75	7492

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EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 20040320

Application Number: 09/922,376

Filing Date: August 03, 2001

Appellant(s): CHAMBERLAIN, JEFFREY LYNN

Charles R Sutton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/02/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-5, 7, 8, 10-13 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,961,406	Hass	10-1999
6,092,489	Huettner et al.	7-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 7, 8 and 11 are rejected under 35 U.S.C. 102(e). This rejection is set forth in prior Office Action, Paper No. 14.

Claims 3-5, 10, 12 and 13 are rejected under 35 U.S.C. 103(a). This rejection is set forth in prior Office Action, Paper No. 14.

(11) Response to Argument

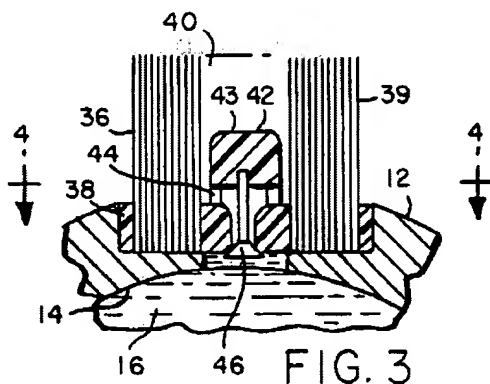
ISSUE ONE

Regarding the Appellant's statement with respect to Claim 2 that the Deshaies invention does not contain an outer layer being shaped to resemble a food item: this argument is respectfully disagreed with. Deshaies clearly discloses at column 8, lines 45-49 that "the hollow portion can be shaped to look like a dog bone." As a bone is a known food item for an animal, Deshaies clearly anticipates the limitation of claim 2 in which the outer layer is shaped to resemble a food item.

Regarding the Appellant's statement with respect to claims 7 and 8 that the Deshaies invention does not have a valve structure that moves in a substantially perpendicular alternate movement with respect to the wall: this argument is respectfully disagreed with. The Appellant has drawn attention to the valve mechanisms of Figures 2 and 7. However, these valve mechanisms were not the basis of the rejection of claims 7 and 8 as pointed out to the Applicant

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in Paper number 14, paragraph 4. Deshaies discloses a valve mechanism 46 (reference Figure 3 below) that moves in a substantially perpendicular alternate movement with respect to the wall and therefore anticipates the limitations of claims 7 and 8.



Regarding the Appellant's statement with respect to claim 11 that the Deshaies invention does not have a valve mechanism that moves in a substantially perpendicular alternate movement nor that the outer layer is shaped to resemble a food item: this argument is respectfully disagreed with. As discussed above with regards to claims 7 and 8, the Deshaies reference discloses a valve mechanism that moves in a substantially perpendicular alternate movement. Deshaies also discloses an outer layer shaped to resemble a food item as discussed above with respect to claim 2. Therefore, the Deshaies invention anticipates the limitations of claim 11.

ISSUE TWO

Regarding the Appellant's statement with respect to claims 3 and 12 that indicia would not be visible through the brushes covering the Deshaies reference: this argument is respectfully disagreed with. As discussed in Paper 14, Paragraph 1: the Deshaies invention discloses a plurality of areas in which the brushes of Deshaies do not cover the surface and therefore indicia

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would in fact be visible therefrom (reference areas 10 and 12 in Figure 1 and the perspective view of Figure 4).

Further regarding the Appellant's statement that the Deshaies Patent does not specifically address the problem of how to provide a metered amount of drinking water for an animal: it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). As the Deshaies reference discloses the structural limitations of the claimed invention, there is no differentiation in the fact that the Appellant's invention is to alleviate thirst and the prior art invention is for brushing the teeth of an animal.

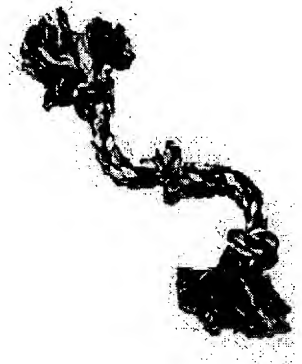
With respect to the Appellant's statement that indicia are not known in the art to make the device more attractive to the animals: this argument is respectfully disagreed with. As anyone who has walked down the pet toy aisle in any retail store will undoubtedly notice, pet toys are notoriously well known in the art to include indicia to make the device more attractive to the animal and to the buying public. Animal toys are well known to include shapes and colourings to resemble animals such as birds and mice and items of food, balls including bumps of varying color, even balls including stitching indicia to resemble an actual baseball or football. Therefore, it is considered that one having ordinary skill in the art would undoubtedly know that indicia is used to make the device more attractive to the animal and the buying public. Further, the applicant has stated that "Dogs and cats cannot read, and they are colorblind". This statement lends credence to the issue that the inclusion of indicia on an animal toy is an obvious matter of design choice since, as the Appellant has stated that dogs and cats cannot read and they are color

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blind, the indicia does not solve any stated problem or is for any particular purpose not known to those with ordinary skill in the art.

ISSUE THREE

Regarding the Appellant's argument with regard to the Deshaies invention teaching away from the disclosed feature of Claims 4 and 10: this argument is respectfully disagreed with. The structure of a rope bone as discussed by Deshaies is not the same structure as taught by Hass. Reference is drawn to the figure demonstrating what is known in the art to embody the structure of a rope bone. The strap as taught by Hass is disclosed to be a nylon braided strap which is not the same structure and does not suffer from the same deficiencies as the rope bone discussed by Deshaies. The nylon-braided strap as taught by Hass is known in the art to be used for dog collars and leashes due to its strength and resistance to chewing by an animal. Therefore, it is maintained that the discussion of a rope bone by Deshaies does not teach away from the handle strap structure as taught by Hass.



Regarding the Appellant's argument that a combination with Hass would be inoperative because the Hass device has a rope going through the hollow portion and therefore would be continually soaking out through the rope itself: this argument is respectfully disagreed with. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined

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teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Hass teaches within the same field of endeavour that the use of a cord attached to an animal apparatus is known as a means for holding the device without having to contact the wet device after the animal has chewed on it. As the device of Deshaies is directly addressing an apparatus that is to be chewed by an animal, one of ordinary skill in the art would look to Hass to solve the problem of a way to handle the apparatus without having to come in contact with the wetted device. As such, the use of a handle is suggested to one with skill in the art as a means for manipulating a device without coming into direct contact therewith.

ISSUE FOUR

Regarding the Appellant's statement with regards to claims 5 and 13 that the liquid filled in the cavity of Deshaies would prevent a bell from ringing or a reed from sounding: this argument is respectfully disagreed with. Particular reference is drawn to Figure 1 of Deshaies in which it is clearly seen that the device includes a hollow interior that is absent of any liquid material (at 20). As such, it is maintained that a bell would in fact ring or a reed would sound there from as it is free from any liquid which is not the case with the Appellant's invention in which the sound making device is contained within the same structure containing the liquid and therefore would suffer more from a dampening affect that the invention of Deshaies. As Huettnner is directed to a pet toy, the teaching of a noisemaker within a hollow device to excite an animal is maintained as a teaching and the combination is considered to be proper and obvious to one having ordinary skill in the art.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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kss

March 22, 2004

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